

JANUARY 10, 2008

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURTIN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RECEIVED

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JAN 8 2008
MICHAEL W. DOBBINS
CLERK, U. S. DISTRICT COURT

Lev AVERBAKH,

Plaintiff,

vs.

Michael CHERTOFF,
Secretary, Department
of Homeland Security;
Emilio T. GONZALES,
Director, U.S. Citizenship and
Immigration Services;
Ruth DOROCHOFF,
District Director, U.S. Citizenship and
Immigration Services;
Robert S. MUELLER, III,
Director, Federal Bureau of Investigations;

Defendants.

Immigration Case No. A 71 851 681

Civ. No. _____

COMPLAINT FOR JUDICIAL
NATURALIZATION
UNDER 8 U.S.C. § 1447(b);
PETITION FOR A WRIT
OF MANDAMUS
UNDER 28 U.S.C. § 1361

08CV144

JUDGE NORGLÉ

MAGISTRATE JUDGE SCHENKIER

**COMPLAINT FOR JUDICIAL NATURALIZATION &
PETITION FOR A WRIT OF MANDAMUS**

Plaintiff Lev AVERBAKH hereby complains that the various Defendants have unreasonably delayed and failed to perform legally required non-discretionary ministerial actions to complete the processing of his properly filed and meritorious application for naturalization. Plaintiff, through the undersigned counsel, alleges the following:

Jurisdiction and Venue

1. This Court is vested with jurisdiction pursuant to the following statutory provisions: 28 USC § 1331; 8 USC § 1447(b) (jurisdiction to review application for naturalization; and 28 USC § 1361 (mandamus jurisdiction).

2. Venue is proper in this Court pursuant to 28 USC § 1391(e). The Defendants, collectively, are officers or employees of the United States or department agencies of the United States acting in their official capacity. The Plaintiff resides in this district and no real property is involved in this action. The events or omissions giving rise to the claim largely occurred in this district, in that that the Chicago District Office of the U.S. Citizenship and Immigration Services (USCIS) processed and interviewed the Plaintiff on his application for naturalization.

Parties

3. Plaintiff Lev AVERBAKH is a national of and native to Russia. In or around August 1992, Mr. Averbakh was granted asylum status by either the former Immigration and Naturalization Service or the agency Immigration Court within the Department of Justice, Executive Office for Immigration Review. In or around 1993, he adjusted status to lawful permanent residence. He currently resides in within the jurisdiction of this Court in Chicago, Illinois.
4. Defendant Michael CHERTOFF is named in his official capacity as the Secretary of the Department of Homeland Security (DHS). The DHS Secretary is responsible for the administration and enforcement of laws related to the naturalization of foreign nationals. *See* 8 USC § 1103(a)(1).
5. Defendant Emilio GONZALES is named in his official capacity as the Director of the U.S. Citizenship and Immigration Services. He is responsible for the administration of the USCIS, the agency under the DHS that adjudicates applications for naturalization.

6. Defendant Ruth DOROCHOFF is named in her official capacity as the District Director of the USCIS for the Chicago district. She is responsible for the administration of the USCIS in the Chicago district pursuant to 8 CFR §§ 310.2 and 316.3.
7. Defendant Robert MUELLER, III, is named in his official capacity as the Director of the Federal Bureau of Investigations (FBI). He is ultimately responsible to conduct background checks on applicants for naturalization when requested by the USCIS.

Statement of the Facts

8. On or about January 20, 2004, Lev Averbakh filed an N-400 application for naturalization with the USCIS. *See* Exhibit 1 (Copy of the Form I-797C, Receipt Notice). Shortly thereafter, Mr. Averbakh appeared for a biometrics appointment as required for the adjudication of his N-400 application.
9. On November 29, 2004, an interview on Mr. Averbakh's N-400 naturalization application was conducted at the USCIS Chicago District Office. *See* Exhibit 2 (Copy of the I-797C, Interview Notice).
10. At the interview, Mr. Averbakh passed the test of English and U.S. history and civics as required by 8 USC § 1423. Following the completion of the interview, USCIS notified him that a decision could not be made on his application as the background check remained pending with the FBI.
11. Since the November 29, 2004 interview, the Defendants have yet to complete the processing of Mr. Averbakh's application for naturalization.

12. On about mid-2005, the law offices at Kenneth Y. Geman and Associates submitted a status inquiry with the USCIS Chicago District Office requesting a status update of Mr. Averbakh's pending naturalization application. The Chicago District Office responded on or about July 30, 2005 stating that "records indicate that the applicant's case is currently pending completion of security checks." *See* Exhibit 3 (Copy of the July 30, 2005 USCIS response to the status inquiry).
13. Thereafter, Mr. Averbakh sought assistance from the Office of Janice D. Schakowsky, Congresswoman for the 9th District of Illinois. On his behalf, an inquiry was submitted to the USCIS by the congressional office. The USCIS Chicago District Office responded on or about December 13, 2005 stating that, "the FBI 'name check' for your constituent [Lev Averbakh] has not yet been completed...It is uncertain the time period it takes for the results to be electronically submitted to USCIS and updated in or national records." *See* Exhibit 4 (Copy of the December 13, 2005 response from USCIS to Congresswoman Schakowsky).
14. On December 18, 2006, Kenneth Y. Geman and Associates submitted another status inquiry on behalf of Mr. Averbakh with the USCIS Chicago District Office. The Defendant USCIS responded on December 22, 2006 that "the FBI name check is still pending." *See* Exhibit 5 (Copy of the December 18, 2006 status inquiry and copy of the December 22, 2006 response by USCIS).
15. In or around May 2007, Mr. Averbakh corresponded with the USCIS Ombudsman's Office requesting a completion of the background check and an

adjudication of his N-400 application for naturalization. On May 8, 2007, the USCIS Ombudsman notified Mr. Averbakh that a status inquiry was forwarded to USCIS on his behalf. On May 25, 2007, the USCIS responded to the Ombudsman's inquiry stating that "A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open." *See* Exhibit 6 (Copy of the USCIS Ombudsman correspondence on May 8, 2007 and the USCIS response on May 25, 2007).

16. In or around May 2007, Mr. Averbakh sought the assistance of the Office of the U.S. Senator, Barack Obama. On his behalf, the Office of Senator Obama submitted an inquiry with the USCIS. On or about September 7, 2007, the Defendant USCIS responded that Mr. Averbakh's naturalization application remained pending and unadjudicated. *See* Exhibit 7 (Copy of the September 2007 correspondence between Office of Barack Obama and the USCIS).
17. To date, the Defendants have not adjudicated the Plaintiff's N-400 application for naturalization or completed his pending background check or name check.

Cause of Action

Count I: Declaration of Naturalization Pursuant to 8 USC § 1447(b)

18. Count I is brought against Defendants Chertoff, Gonzales and Dorochoff as the persons responsible for the processing of Mr. Averbakh's N-400 application for naturalization.
19. Mr. Averbakh is statutorily eligible in all respects to have his naturalization application approved and to have an oath of citizenship administered for him

to become a U.S. citizen. He previously submitted to the Defendants' fingerprinting requirements and thus the Defendants have no substantive reason to deny or further delay the adjudication of his application.

20. On information and belief, USCIS internal policies restrain the agency from either approving or denying Mr. Averbakh's application until the FBI has completed its investigation. The naturalization provisions of the Immigration and Nationality Act, however, do not require Mr. Averbakh to wait an indefinite amount of time. To the contrary, the statute requires the USCIS to complete its processing within 120 days of the naturalization interview. More than 120 days have passed since the interview. The Defendants' failure to make a determination on the application for naturalization, and Mr. Averbakh's filing of this complaint provide this Court with exclusive jurisdiction under 8 USC § 1447(b) to determine the application for naturalization, or to order the agency to promptly determine the application. *See, e.g. United States v. Hovespian*, 359 F.3d 1144 (9th Cir. 2004); *Khan v Chertoff*, 2006 U.S. Dist. LEXIS 48937 (D. Ariz. July 14, 2006); *Khelifa v. Chertoff*, 433 F.Supp. 2d 836, 841 (E.D. Mich. June 9, 2006); *Meyersiek v. United States Citizenship and Immigration Services*, 2006 U.S. Dist. LEXIS 37539 (D.N.J. May 22, 2006); *Al-Kudsi v. Gonzales*, 2006 U.S. Dist. LEXIS 16761 (D. Or. March 22, 2006); *Zhang v. Chertoff*, 2006 U.S. Dist. LEXIS 45313 (E.D. Mich. February 1, 2006); *Shalan v. Chertoff*, 2006 U.S. Dist. LEXIS 253 (D. Mass. January 6, 2006); *Saidi v. Jenifer*, 2005 U.S. Dist. LEXIS 35466 (E.D. Mich. December 23, 2005); *Essa v. United States*

Citizenship and Immigration Services, 2005 U.S. Dist. LEXIS 38803 (D. Minn. December 14, 2005); *El Daour v. Chertoff*, 417 F.Supp.2d 679, 681 (W.D. Pa. 2005); *Castracani v. Chertoff*, 377 F.Supp. 2d. 71 (D.D.C. July 5, 2005).

21. Mr. Aberbakh requests a judicial determination of his naturalization application and a declaration that he is entitled to be naturalized as a citizen of the United States.

Count II: Mandamus – Request for Completion of Background Checks

22. Count II is brought against Defendant Mueller in his official capacity as Director of the FBI as the person who is ultimately responsible for completing the background check in Mr. Averbakh's case.
23. Defendant Mueller owes a duty to the Plaintiff to complete his background check in a timely manner. Mr. Averbakh has the right to have this background check completed and to receive a decision on his application for naturalization in a timely manner. Completing the background check is a ministerial act that does not involve the exercise of discretion.
24. Defendant Mueller is violating his duty by refusing to complete Mr. Averbakh's background check in a reasonable amount of times and by failing to communicate the results of such background checks to the USCIS.
25. Mr. Averbakh demonstrates that he has exhausted all available administrative remedies and sought to resolve the matter informally with Defendants. *See* paragraphs 11 through 17, *supra*.


26. Mr. Aberbakh needs to have his background check completed immediately to allow him to naturalize to become a U.S. citizen.

Prayer for Relief

WHEREFORE, Plaintiff, Mr. Lev Aberbakh, prays that:

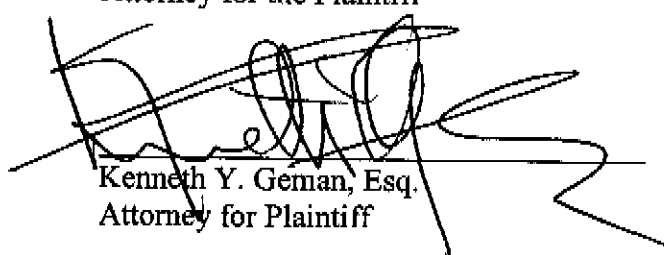
1. The Court will hear Mr. Aberbakh's case and render a declaratory judgement that he is entitled to be naturalized;
2. The Court will order an immediate date for naturalization of Mr. Aberbakh and will oversee the actual naturalization of Mr. Aberbakh; and
3. The Court grant such further relief, including attorney fees and costs of this action, as may be just, lawful, and equitable.

Respectfully submitted,



David M. Cook, Esq.
Attorney for the Plaintiff

Date: December 26, 2007



Kenneth Y. Geman, Esq.
Attorney for Plaintiff


Date: December 26, 2007

Kenneth Y. Geman and Associates
33 North LaSalle Street, Suite 2300
Chicago, Illinois 60602
Tel: (312) 263-6114
Fax: (312) 263-0104

CERTIFICATE OF SERVICE

I, David M. Cook, hereby certify that the above *Complaint for Judicial Naturalization & Petition for a Writ of Mandamus* was served upon the following parties via first class mail, postage prepaid, certified return receipt requested on December 26, 2007.

1. Michael Chertoff
Director, Department of Homeland Security
U.S. Department of Homeland Security
Washington, D.C., 20528
Attention: Office of the General Counsel
2. Emilio T. Gonzales
Director, U.S. Citizenship and Immigration Services
U.S. Citizenship and Immigration Services
425 I Street NW
Washington, D.C. 20536
3. Ruth Dorochoff
District Director, U.S. Citizenship and Immigration Services
101 W. Congress Parkway
Chicago, IL 60605
4. Robert S. Mueller, III
Director, Federal Bureau of Investigation
J. Edgar Hoover Building
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001
5. Patrick Fitzgerald
U.S. Attorney for the Northern District of Illinois
219 South Dearborn Street
Fifth Floor
Chicago, Illinois 60604



David M. Cook, Esq.
Kenneth Y. Geman and Associates
33 N. LaSalle St., Ste. 2300
Chicago, Illinois 60602

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- Exhibit 1: Copy of the Form I-797C, Receipt Notice for the N-400 application for naturalization.
- Exhibit 2: Copy of the I-797C, Interview Notice on the N-400 application for naturalization.
- Exhibit 3: Copy of the July 30, 2005 USCIS response to the status inquiry.
- Exhibit 4: Copy of the December 13, 2005 response from USCIS to Congresswoman Schakowsky.
- Exhibit 5: Copy of the December 18, 2006 status inquiry and copy of the December 22, 2006 response by USCIS.
- Exhibit 6: Copy of the USCIS Ombudsman correspondence on May 8, 2007 and the USCIS response on May 25, 2007.
- Exhibit 7: Copy of the September 2007 correspondence between Office of Barak Obama and the USCIS.

Notice of Action



Receipt with Exception			NOTICE DATE February 13, 2004
CASE TYPE N400 Application For Naturalization			INS # A 071 851 681
APPLICATION NUMBER LIN*000628960	RECEIVED DATE January 20, 2004	PRIORITY DATE January 20, 2004	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS LEV AVERBAKH # 303 5220 NORTH KENMORE AVENUE CHICAGO IL 60640		PAYMENT INFORMATION: Single Application Fee:	
<p> </p> <p>The above application has been received by our office and is in process, but has been noted with one or more of the following exception(s):</p> <p>Missing Evidence(s) - your application was missing evidence(s) that you will need to provide at the time of your naturalization interview. You will be notified under separate notice of the necessary evidence(s) that you will be required to bring to your interview. Do not submit any evidence(s) by mail.</p> <p>Fee Waiver Request Approved - the request to waive the fee for this application has been approved.</p> <p>Our records indicate your personal information is as follows:</p> <p>Date of Birth: October 25, 1939 Address Where You Live: 5220 NORTH KENMORE AVENUE # 303 CHICAGO IL 60640</p> <p>Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.</p> <p>You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 540 days of this notice.</p> <p>IMPORTANT NOTICE: All naturalization applicants who were between the ages of 14-75 at the time of filing must have their fingerprints taken at an INS Application Support Center (ASC) so they can be submitted to the Federal Bureau of Investigation for a criminal history check. If we received your application without a fingerprint card (FD-258), or your fingerprint card was received on or after December 3, 1997, you will need to go to an ASC to be fingerprinted. Do not have your fingerprints taken anywhere else. You will receive a notice that will provide you with information about when and where to go to have your fingerprints taken, and what you will need to bring with you. Please inform the office listed below immediately of any address changes.</p> <p>If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.</p> <p>If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.</p> <p>If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.</p> <p>INS Office Address: US IMMIGRATION AND NATURALIZATION SERVICE PO BOX 87400 LINCOLN NE 68501-</p> <p>INS Customer Service Number: (800) 375-5283</p> <p>APPLICANT COPY EXHIBIT 1</p> <p></p>			

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797C, Notice of Action

THE UNITED STATES OF AMERICA

Request for Applicant to Appear for Naturalization Initial Interview			NOTICE DATE September 21, 2004
CASE TYPE N400 Application For Naturalization			INS AS A 071 851 681
APPLICATION NUMBER LIN*000628960	RECEIVED DATE January 20, 2004	PRIORITY DATE January 20, 2004	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS LEV AVERBAKH # 313 4215 BROADWAY AVE N APT CHICAGO IL 60613		Please come to: CHICAGO CUSA OFFICE 539 SOUTH LA SALLE STREET CITIZENSHIP OFFICE FIRST FLOOR CHICAGO IL 60605 On (Date): Monday, November 29, 2004 At (Time): 08:05 AM	

You are hereby notified to appear for an interview on your Application for Naturalization at the date, time, and place indicated above. Waiting room capacity is limited. Please do not arrive any earlier than 30 minutes before your scheduled appointment time. The proceeding will take about two hours. If for any reason you cannot keep this appointment, return this letter immediately to the INS office address listed below with your explanation and a request for a new appointment; otherwise, no further action will be taken on your application.

If you are applying for citizenship for yourself, you will be tested on your knowledge of the government and history of the United States. You will also be tested on reading, writing, and speaking English, unless on the day you filed your application, you have been living in the United States for a total of at least 20 years as a lawful permanent resident and are over 50 years old, or you have been living in the United States for a total of 15 years as a lawful permanent resident and are over 55 years old, or unless you have a medically determinable disability (you must have filed form N648 Medical Certification for Disability Exception, with your N400 Application for Naturalization).

You MUST BRING the following with you to the interview:

- This letter.
- Your Alien Registration Card (green card).
- Any evidence of Selective Service Registration.
- Your passport and/or any other documents you used in connection with any entries into the United States.
- Those items noted below which are applicable to you:

If applying for NATURALIZATION AS THE SPOUSE of a United States Citizen;

- Your marriage certificate.
- Proof of death or divorce for each prior marriage of yourself or spouse.
- Your spouse's birth or naturalization certificate or certificate of citizenship.

If applying for NATURALIZATION as a member of the United States Armed Forces;

- Your discharge certificate, or form DD 214.

If copies of a document were submitted as evidence with your N400 application, the originals of those documents should be brought to the interview.

PLEASE keep this appointment, even if you do not have all the items indicated above.

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.

INS Office Address:
 US IMMIGRATION AND NATURALIZATION SERVICE
 CITIZENSHIP OFFICE
 539 SOUTH LA SALLE
 CHICAGO IL 60605-

INS Customer Service Number:
 (800) 375-5283

APPLICANT COPY

EXHIBIT 2

U.S. Department of Homeland Security
10 W. Jackson Blvd.
Chicago, IL 60604



**U.S. Citizenship
and Immigration
Services**

July 30, 2005

Kenneth Y. Geman & Associates
33 N. LaSalle St. Ste. #2300
Chicago, IL. 60602

Re: A71851681 – Averbakh, Lev

Dear Kenneth Y. Geman,

Service records indicate that the applicant's case is currently pending completion of security checks. A final decision cannot be made on any application for naturalization or adjustment of status to permanent resident until national security checks are complete and the local USCIS office receives a response. National security checks are performed by federal agencies other than the United States Citizenship and Immigration Services (USCIS). Your local USCIS office has no control over the pace of completion of these required checks.

At any given time, there are many hundreds of this office's cases pending due to national security checks. A significant portion of these checks takes more than six months to complete. At the USCIS Chicago District Office, cases with pending security checks are queried every week to ensure that those whose checks have cleared are acted on in a timely manner.

We appreciate your patience.

Sincerely,

Michael M. Comfort
District Director

MMC:mr

Thank you for contacting USCIS Customer Service

www.uscis.gov

EXHIBIT 3

-----Original Message-----

From: USCIS

Sent: Tuesday, December 13, 2005 9:42 AM

To: Popchun, Hector

Subject: A71 851 681, Lev Averbakh

U. S. Department of Homeland Security
10 W. Jackson Blvd.
Chicago, Illinois 60604

December 13, 2005

The Honorable Janice D. Schakowsky
United States Representative

Attention: Hector Popchun

Re: A71 851 681 - Averbakh, Lev

Dear Congressman Schakowsky,

United States Citizenship and Immigration Services (USCIS) Chicago District Office is responding to your inquiry regarding the status of your constituent, Lev Averbakh. Our information shows that the FBI "name check" for your constituent has not yet been completed. We may not proceed with the adjudication of the application or petition until the FBI completes their process and our records are updated with the results. It is uncertain the time period it takes for the results to be electronically submitted to USCIS and updated in our national records.

Please be assured that every case that is pending a name check clearance is checked weekly for results to keep the adjudication process ongoing and timely. We are allowed to resubmit names pending over 90 days only if the name does not appear in the FBI database after 90 days of submission. If requesting an expedite processing of the name check your constituent must provide a written request with an explanation directed to the District Director for consideration.

The FBI will only expedite the processing if the person is in the military, an "age-out" or diversity (DV) lottery winner.

Again, it is difficult to predict with accuracy when the clearance will be updated in our records. Please

EXHIBIT 4

be assured that every effort is being made to render a final decision in a timely manner.

Sincerely,

Michael M. Comfort
District Director

MMC:tak

JANICE D. SCHAKOWSKY
9TH DISTRICT, ILLINOIS

COMMITTEE ON ENERGY AND COMMERCE

CHIEF DEPUTY WHIP

1027 LONGWORTH HOUSE OFFICE BUILDING
Telephone: 202-225-2111
Fax: 202-225-6890
TTY: 202-225-1904

Congress of the United States
House of Representatives
Washington, DC 20515-1309

December 13, 2005

5533 N. BROADWAY, SUITE 2
CHICAGO, IL 60640
Telephone: 773-506-7100
Fax: 773-506-9202

820 DAVIS STREET, SUITE 105
EVANSTON, ILLINOIS 60201
Telephone: 847-328-3409
Fax: 847-328-3425

1420 RENAISSANCE DRIVE, SUITE 102
PARK RIDGE, IL 60068
Telephone: 847-298-2128
Fax: 847-298-2173

Mr. Lev Averbakh
4215 N. Broadway Ave. # 313
Chicago, Illinois 60613-2446

Dear Mr. Averbakh:

Our office has received a response to the Congressional Inquiry we launched with the U.S. Citizenship and Immigration Services (USCIS) on your behalf. Enclosed please find a copy of the letter from Mr. Michael M. Comfort, Director of the USCIS. If you should have any question please contact me by phone at (773) 506 7100. Thank you for your patience in this matter

Sincerely,



Hector Pop
Constituent Advocate

P.S. We've created an **Email Newsletter** to provide periodic updates on a variety of issues. You can sign up for it by going to my website at <http://www.house.gov/schakowsky>.

John O'Brien

From: John O'Brien [john@gernanimmigrationlaw.com]
Sent: Monday, December 18, 2006 1:13 PM
To: USCIS Pilot Program
Subject: AILA Status Inquiry - Averbakh, Lev (A-71-851-681)

Attached please find the status inquiry for the above referenced individual.

Thank you for your assistance.

Sincerely,

John OBrien
john@gernanimmigrationlaw.com

Kenneth Y. Geman & Associates
33 N. LaSalle Street
Suite 2300
Chicago, Illinois 60602
(312) 263-6114
(312) 263-0104 (fax)
www.gernanimmigrationlaw.com
info@gernanimmigrationlaw.com

The information contained in this communication may be confidential, is intended only for the use of the recipient named above, and may be legally privileged. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system.

EXHIBIT 5



DEPARTMENT OF HOMELAND SECURITY
U. S. Citizenship and Immigration Services
Chicago District Office

STATUS INQUIRY FORM

DATE DEC 18 2006CORRESPONDENCE DETAILS

On Behalf of (Applicant):

A Number: A71-851-681Name: AVERBAKH, Lev
Last First MiddleMailing Address: 4215 N. Broadway Apt # 313City: Chicago State: IL Zip Code: 60640Daytime Phone Number: (773) 988-5661Country of Birth: RUSSIA Date of Birth: 10/25/39
☐ Check box if author is same as applicant
(DO NOT complete the following if box is checked)

Type of inquiry:

☐ Applicant ☒ Attorney ☐ CBO
Name: Geman, Kenneth Y.
Last First MiddleFirm / Organization: Kenneth Y. Geman & AssociatesMailing Address: 33 N. LaSalle StreetSuite # or Apt. #: 2300City: Chicago State: IL Zip Code: 60602Phone No.: 312-263-6114CORRESPONDENCE INFORMATIONClass: GENERALRequest Type (check all that apply): ☐ Address Change ☒ General ☐ Received DocumentsType of Application (check one): ☐ Adjustment of Status ☒ Citizenship

Form Filed:

☐ I-130 ☐ I-485 ☐ I-751 ☐ I-765 ☐ I-824

☐ N-336 ☒ N-400 ☐ N-565 ☐ N-600 ☐ N-643 ☒ Other: N-648
Request reschedule for (check one): ☐ Interview ☐ Oath ☐ FingerprintingAdditional Comments: Client was interviewed on November 29, 2004 by Officer McEllion, pending background report. Currently awaiting an adjudication and oath forswearing-in, if appropriate.Applicant Signature: [Signature]Date: DEC 18 2006

MUST INCLUDE A PRIVACY RELEASE SIGNATURE FROM THE APPLICANT

MAIL INQUIRIES TO: USCIS, CORRESPONDENCE UNIT, P.O. BOX 3616, CHICAGO, IL 60690

FAX INQUIRIES TO: (312) 385-3407

Revised 032206yv

John O'Brien

From: CAO PILOT [CAO.Pilot@dhs.gov]
Sent: Friday, December 22, 2006 9:18 AM
To: John O'Brien
Subject: RE: AILA Status Inquiry - Averbakh, Lev (A-71-851-681)

Dear Mr. O'Brien:

Thank you for your e-mail to the U.S. Citizenship and Immigration Services (USCIS). The following response is provided for your information/action.

The processing of your client's case has been delayed. A check of our records establishes that the case is not yet ready for decision, as the FBI's name check is still pending. Therefore, the required investigation into your client's background remains open.

Until the background investigation is completed, we cannot move forward on the case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the background checks are complete. If you do not receive a decision or other notice of action from us within six months of the date of this letter, please contact customer service at 1-800-375-5283.

We trust that this information is helpful.

Sincerely,

Lorraine Silva
Customer Assistance Office
U.S. Citizenship and Immigration Services

-----Original Message-----

From: John O'Brien [mailto:john@gemanimmigrationlaw.com]
Sent: Monday, December 18, 2006 2:13 PM
To: USCIS Pilot Program
Subject: AILA Status Inquiry - Averbakh, Lev (A-71-851-681)

Attached please find the status inquiry for the above referenced individual.

Thank you for your assistance.

Sincerely,

John OBrien
john@gemanimmigrationlaw.com

Kenneth Y. Geman & Associates
33 N. LaSalle Street
Suite 2300
Chicago, Illinois 60602
(312) 263-6114
(312) 263-0104 (fax)
www.gemanimmigrationlaw.com
info@gemanimmigrationlaw.com

The information contained in this communication may be confidential, is

intended only for the use of the recipient named above, and may be legally privileged. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system.

Office of the
Citizenship and Immigration Services Ombudsman

U.S. Department of Homeland Security
Mail Stop 1225
Washington, D.C. 20528-1225



**Homeland
Security**

May 8, 2007

Mr./Ms. Lev Averbakh
4215 N Broadway St, Apartment 313
Chicago, IL 60613-1683

Dear Mr./Ms. Averbakh:

Thank you for your recent inquiry regarding your immigration issue.

Upon receipt of your information, the office of the Citizenship and Immigration Services Ombudsman (CIS Ombudsman) initiated a formal inquiry with the U.S. Citizenship and Immigration Services (USCIS). USCIS should issue a response to you within forty-five (45) days. If you do not receive a response within this period, please notify our office.

Please be aware that although the office of the CIS Ombudsman collaborates with USCIS, it is an independent entity within the Department of Homeland Security (DHS). The office of the CIS Ombudsman is charged with assisting individuals who experience difficulties with the USCIS benefits process. Additionally, the office of the CIS Ombudsman is dedicated to identifying systemic problems in the immigration benefits process, and to recommending solutions to USCIS. Therefore, the concerns you raised in your letter will be considered as our office develops recommendations to improve USCIS' administrative practices.

Once again, thank you for contacting the office of the CIS Ombudsman, and for giving us the opportunity to serve you.

Sincerely,

Prakash Khatri
Ombudsman

PIK/bh 

EXHIBIT 6

U.S. Citizenship
and Immigration
Services

HQCIS 181/48.2-C

MAY 2 5 2007

Mr. Lev Averbakh
Apartment 313
4215 North Broadway Street
Chicago, IL 60613

Dear Mr. Averbakh:

Thank you for your letter dated April 3, 2007, to the U.S. Citizenship and Immigration Services Ombudsman (CISO). The letter concerning Form N-400, Application for Naturalization, was forwarded to the Customer Assistance Office for a response and assigned case # 670363.

The U.S. Citizenship and Immigration Services (USCIS) office having jurisdiction over your case has been contacted on your behalf. According to the Chicago District Office a final decision has not been rendered and the case remains actively pending. We regret the length of time it has taken to process your N-400 application. The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

We are aware that this case has passed the processing time, unfortunately, sometimes background checks can become a lengthy process and we are unable to provide an approximate date of completion, to you at this time. Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking.

To further explain the background investigation process we've enclosed a Fact Sheet from our web site at www.uscis.gov titled Immigration Security Checks - How and Why the Process Works for your review.

Mr. Lev Averbakh
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We also understand the time sensitive nature of this matter and greatly appreciate your continued patience. We will make every effort to make a decision on this case as soon as the background checks are complete. If you require additional assistance, download forms and/or filing instructions we invite you to contact the USCIS National Customer Service Center at 1-800-375-5283 or visit our web site at www.uscis.gov.

We trust that this information is helpful.

Sincerely,



Constance L. Carter, Supervisor
Customer Assistance Office
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

Enclosure: USCIS Fact Sheet: Immigration Security Checks – How and Why the Process Works

BARACK OBAMA
ILLINOISCOMMITTEES:
HEALTH, EDUCATION, LABOR AND PENSIONSHOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS

FOREIGN RELATIONS

VETERANS' AFFAIRS

United States Senate

WASHINGTON, DC 20510

September 7, 2007

Mr. Lev Averbakh
4215 North Broadway Apt 313
Chicago, Illinois 60613

Dear Mr. Averbakh:

Thank you for your letter to Senator Barack Obama about your pending immigration issue. I handle Immigration/Visa cases for the Senator and he has asked me to respond on his behalf.

I have contacted the U.S. Citizenship and Immigration Service (USCIS) on your behalf to inquire about the status of your case. A representative from USCIS reported back to me stating that your case is being held pending name check completion, I have enclosed the agency response.

Due to the length of time your FBI name check has been pending, I have taken the liberty of submitting an inquiry directly to the FBI on your behalf regarding the status of your case. Please be aware that the FBI takes between thirty (30) and sixty (60) days to respond.

I understand the frustration of enduring such long waits. However, I trust that the FBI and USCIS are working as quickly as they can given the security requirements and caseloads that they face. If you have additional information or concerns relative to this matter, please feel free to contact me at 312-886-3506.

Sincerely,



Sana Hussain
Constituent Services Agent

Office of U.S. Senator Barack Obama
230 S. Dearborn, Suite 3900
Chicago, IL 60604

EXHIBIT 7

WASHINGTON OFFICE
713 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
OFFICE (202) 224-7854
FAX (202) 228-4260

CHICAGO OFFICE
230 S. DEARBORN
SUITE 3900
CHICAGO, IL 60604
OFFICE (312) 886-3506
FAX (312) 886-3514

SPRINGFIELD OFFICE
607 EAST ADAMS
SUITE 1620
SPRINGFIELD, IL 62701
OFFICE (217) 492-5088
FAX (217) 492-5099

MARION OFFICE
701 NORTH COURT STREET
MARION, IL 62958
OFFICE (618) 997-2402
FAX (618) 997-2850

MOBILE OFFICE
1911 52ND AVENUE
MOBILE, IL 61265
OFFICE (309) 736-1217
FAX (309) 736-1233

The Honorable Senator Barack Obama
United States Congress
Attn: Sana Hussain

This is in response to your inquiry. The United States Citizenship and Immigration Services (USCIS) Chicago District Office is responding to your inquiry regarding the status of your constituent, Lev Averbakh, A 7185168. Our information shows that the background investigation conducted by the Federal Bureau of Investigations (FBI) for your constituent has not yet been completed. We may not proceed with the adjudication of the application or petition until the FBI completes their process and our records are updated with the results. It is uncertain the time period it takes for the results to be electronically submitted to USCIS and updated in our national records.

Please be assured that every case that is pending a background investigation is checked weekly for results to keep the adjudication process ongoing and timely. We are allowed to resubmit names pending over 90 days only if the name does not appear in the FBI database after 90 days of submission. If requesting an expedite processing of the background investigation your constituent must provide a written request with an explanation directed to the District Director for consideration with supporting evidence. The FBI will only expedite the processing if your constituent is in the military, an "age-out", diversity (DV) lottery winner meeting the deadline date or for compelling reasons.

Again, it is difficult to predict with accuracy when the clearance will be updated in our records. Please be assured that every effort is being made to render a final decision in a timely manner.

Robert L. Blackwood
Field Office Director
